PAWNBROKERS: VIOLATION OF PENAL CODE: EFFECT ON VALIDITY OF CONTRACT.—When economists are unable to agree upon the initial advisability of usury laws,[1] it is not surprising that such laws, when enacted, have been cast in divergent forms,[2] or that the interpretations put upon them have been various.[3] The California statutes relating to pawnbrokers make it a misdemeanor (1) to conduct a pawnbroking business without a license; (2) to fail at the time of the transaction to make certain entries in a register and deliver a copy thereof to the pawnor; or (3) to charge or receive interest in excess of two percent per month.[4] A violation of the first of these provisions has been held to avoid the entire contract, and prevent any recovery upon it.[5] In *Innes v. Goldwater*,[6] the plaintiff contended that a violation of either of the other two would have the same effect. Judgment went against him on both points. Upon the question of the effect of a usurious interest charge, the court held itself concluded by the holding in Jackson v. Shawl,[7] expressly approved in Levinson v. Boas.

It is admitted that "every case from every court recognizes that when a statute has been made for the protection of the public a contract in violation of its provisions is void."[8] The contract so avoided here was the agreement to pay usurious interest. Applying the principle that "when any matter void, even by statute, be mixed up with good matter, which is entirely independent of it,

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child, and, therefore, that the rule of non-liability of the father, which is founded upon the theory that the duty of support grows out of the right to custody, does not apply in this case. Although this question has never been directly passed upon in the earlier cases, it seems that the decision in the principal case is in conflict with the general doctrine of non-liability as established in this jurisdiction. See cases cited in note 5, supra. Also People v. Schlott (1912), 162 Cal. 347, 122 Pac. 846; Calegaris v. Calegaris (1906), 4 Cal. App. 264, 87 Pac. 561.

[1] J. S. Mill, Principles of Political Economy, Fifth London ed., (1882), Bk. V., Ch. X., § 2; A. V. Dicey, Law and Opinion in England, pp. 33, 45, 189; Stephens' Commentaries, 16th ed., vol. 2, p. 188; 17 American Jurist, 331.

[2] Van der Velde v. Wilson (1913), 176 Mich. 185, 142 N. W. 553; Tuxbury v. Abbott (1871), 59 Me. 466; Fretz v. Murray (1898), 118 Mich. 302, 76 N. W. 495; Campbells v. Patterson (1840), 11 Leigh, 113.

[3] See 19 Harvard Law Review, 454, stating that cases are in conflict even under the New York statute, which expressly denies the contract any validity either at law or in equity. Cf. Miller v. Ford (1831), 1 N. J. Eq. 358; Krumsieg v. Mo. K. & T. Trust Co. (1896), 71 Fed. 350.

[4] Cal. Pen. Code, §§ 338, 339, 340.

[5] Levinson v. Boas (1907), 150 Cal. 185, 88 Pac. 825, 12 L. R. A. (N. S.) 575, and note.

[6] (Mch. 8, 1916), 22 Cal. App. Dec. 541, 157 Pac. 18.

[7] (1865), 29 Cal. 267, arising under Cal. Stats. 1861, p. 184, upon which § 340 of the Penal Code is based.

[8] Levinson v. Boas, supra; Berka v. Woodward (1899), 125 Cal. 127, 57 Pac. 777; Pinney v. First Nat. Bk. of Concordia (1904), 68 Kan. 223, 75 Pac. 119, 1 Ann. Cas. 333; Forster v. Taylor (1834), 5 B. & Ad. 887.

the good part shall stand and the rest be void,"[9] it is held that the agreement to repay the principal is separable from the agreement to pay interest, and that only the latter is vitiated by the illegality. It is not determined what interest, if any, is due the pawnee. No discussion of public policy or legislative purpose has been attempted. Yet this refinement has not been attained by other courts, which have, under similar statutes, held that the transaction failed in toto.[10] It is noteworthy in this connection, that the statute regulating "personal property brokers" declares that "no contract made by any personal property broker shall be valid or of a greater rate of interest than two per cent per month."[11] In upholding this act as non-discriminatory, the court, in Eaker v. Bryant,[12] said, "the exclusion from the act of the business of taking pledges as securities for loans is accounted for by the terms of the laws already in existence controlling the business of pawnbrokers." Apparently the interpretation of section 340 made by the instant case, was not suggested to that court. Still, this portion of the holding of the principal case is evidently the law in this state. In its effect upon the individual parties, it approaches the general rule of courts of equity,[13] that the borrower may obtain affirmative relief only upon the condition of tendering the amount actually loaned and legal interest. The infrequency of cases under the statute renders it doubtful whether a stricter construction would have any real deterrent effect upon usurious dealing.

Upon the other issue raised, the court held that the omission on the part of the pawnbroker to give the plaintiff a copy of the entry in his register, though a misdemeanor, was a matter collateral to the transaction,[14] and had no effect on its validity. It is submitted that this interpretation does violence to the doctrine advanced in the Levinson case. An English case[15] arriving at the opposite conclusion was there cited with approval. The English statute prescribed that the required entries be made "before advancing money on the pledge." In spite of this verbal distinction, it would seem that the purpose of the two statutes must have been the same. Toward the English view, the court in Levinson v. Boas undoubtedly looked when it said, "we are dealing with a business which is and always has been subject to police regulation and

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[9] Jackson v. Shawl, supra, n. 7, quoting from 2 Kent's Comm. 468.

[10] Youngblood v. Birmingham Trust & Savings Co. (1892), 95 Ala. 521, 12 So. 579, 20 L. R. A. 58; Wetmore v. Brien and Bradley (1859), 3 Head (Tenn.) 723; Siter v. Sheets (1855), 7 Ind. 132.

[11] Cal. Stats. 1909, p. 969, amended, Cal. Stats. 1911, p. 978.

[12] Eaker v. Bryant (1904), 24 Cal. App. 87, 140 Pac. 310.

[13] Pomeroy Equity Jurisprudence, § 937.

[14] Citing Wood v. Krepps (1914), 168 Cal. 382, 143 Pac. 691, which arose under the personal property brokers act, and expressly distinguished Levinson v. Boas, supra, n. 5, as a pawnbrokers case.

[15] Fergusson v. Norman (1838), 5 Bing. N. C. 76, 6 Scott 794, 132 Eng. Rep. R. 1034, resting on Stat. 39 and 40 Geo. III, c. 99, § 6.

which is unlawful if not conducted under the provisions, restrictions and requirements of the law," and proceeded to discuss license and registry together, as requirements of the law which should be strictly complied with, to give the transaction validity. To hold otherwise, restricts the principle of Levinson v. Boas to the single situation there presented, viz.: that in which the pawnbroker is doing business without a license.[16]

C. A. R.

PUBLIC UTILITIES: VALUATION OF PROPERTIES BY RAILROAD COMMISSION FOR PURPOSES .OF CONDEMNATION: SCOPE OF JUDICIAL REVIEW.—In *Marin Water and Power Company v. Railroad Commission of the State of California*,[1] a proceeding in certiorari[2] was instituted for the purpose of reviewing a decision of the Railroad Commission[3] fixing the compensation to be paid by the Marin Municipal Water District for the lands, property and rights of the water company. The Supreme Court of California held that in making this determination the Commission exercised judicial power, and hence the court had jurisdiction in certiorari to inquire whether the Commission had exceeded its authority, even without the express grant of such jurisdiction in the Act itself. It was ruled that when a finding or conclusion of fact is based upon uncontradicted evidence, its accuracy usually becomes a mere question of law, and may be reviewed if it goes to the jurisdiction. However, the court avoided a determination of the jurisdictional character of the petitioner's objections, finding them insufficient when considered upon their merits.

Section 47 of the California Public Utilities Act under which the Commission proceeds in valuing the properties of public utilities, permits of a review of the Commission's findings by the Supreme Court "in the same manner . . . . as other orders and

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[16] Cf. 3 California Law Review, 255, for comment looking toward an interpretation differing from that reached in the principal case.

[1] (Jan. 17, 1916), 51 Cal. Dec. 60, 154 Pac. 864.

[2] Instituted under the provisions of § 47 of the Public Utilities Act as amended (Cal. Stats. 1913, p. 684). The state constitution was amended by the adoption, on Nov. 3, 1914, of § 23a of article XII, which declared that the railroad commission should have such power to fix the just compensation to be paid for the property when it is sought to be acquired by a municipal corporation or public utility district as the legislature shall confer upon it and that "all acts of the legislature heretofore adopted which are in accordance herewith, are hereby confirmed and declared valid." The California Supreme Court holds that this removes all doubt of the present validity of the amendment to § 47. The proceedings in this case were begun prior to the adoption of the constitutional amendment but any objections that might have been made upon this ground were deemed to have been waived by the water company.

[3] In the matter of the application of Marin Municipal Water District for an order etc. (Apr. 9, 1915), 6 C. R. C. 507.